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MEMORANDUM

Date: March 23, 2020
To: Maureen Lewis, Administrative Law Division Director
From: Donald Kersey, General Counsel
RE: Suspension of 153 CSR 30. Use of Digital Signatures, State Certificate Authority And State Repository

On March 16, 2020, the Governor issued a proclamation declaring a State of Emergency in response to the public health risks posed by the Coronavirus epidemic in West Virginia, which proclamation "delegate[s] to all state agencies the ability to suspend rules, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency" pursuant the Governor's authority set forth in W. Va. Code § 15-5-6(c)(7).

153 CSR 30 ("rule") establishes an administrative process for state agencies to accept electronic signatures in lieu of original signatures on "messages or filings requiring on ore more original signatures," subject to the provisions and limitations of W. Va. Code § 39A-3-3, which require WVSOS to promulgate rules to establish standards and processes to facilitate the use of electronic signatures by certain state agencies.

Under the rule, WVSOS and the Office of Technology ("OT") must grant approvals and review the specific technical capabilities of any state agency's proposed use of digital signature certification and authentication technology prior to its use by the agency.

During the State of Emergency and pursuant to guidance issued by the Governor, Department of Health and Human Resources, Center for Disease Control and Prevention, and other state and federal agencies, state agencies and their staff—especially those working in the field—are restricted from in-person interactions with the general public. As such, many state agencies are unable execute certain documents necessary to continue the services offered by the agencies without in-person interactions, which puts both state employees and the public at risk.

W. Va. Code § 39A-1-1 *et seq.* provides basic guidance and authority for state agencies to accept digital signatures with the parties' consent. However, the rule establishes the appropriate methods of securely accepting such digital signatures, including verification and other fraud-prevention technology standards.

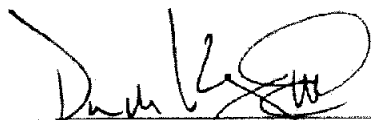
WVSOS and OT are exploring current statewide contracts and other options which would allow state agencies to securely conduct state business without the need for in-person interactions. OT will soon begin reviewing technology currently used by state agencies for security compliance with the rule. Therefore, because strict compliance with the rule will prevent, hinder and delay

necessary action in coping with the emergency declared by the Governor, and because in-person interactions are otherwise required without a state agency's ability to accept digital signatures, suspending the rule during the State of Emergency is a necessity to protect state employees, the public, and will allow agencies to operate under the guidance of WVSOS, OT and the provisions of W. Va. Code § 39A-1-1 *et seq.* without needing to go through the time-consuming processes and procedures set forth in the rule.

Therefore, pursuant to the authority delegated to the Secretary of State by the Governor's proclamation, the Secretary of State hereby declares that the provisions of 153 CSR 30 pertaining to the use of digital signatures, state certificate authority and state repository are **SUSPENDED**, effective as of the date of this Memorandum. The rule suspension shall remain in effect until such time that the State of Emergency is lifted.

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WV Secretary of State

By Counsel:



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